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IN THE

Supreme Court of the United States

October Term, 1967

No 673

GEORGE CAMPBELL PAINTING CORP.,

Appellant,

against

WILLIAM REID, FRANCIS V. MADIGAN, IRA S. ROBBINS, Members of the New York City Housing Authority, and THE NEW YORK CITY HOUSING AUTHORITY,

Appellees.

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On Appeal from the Court of Appeals of the State of New York

APPELLANT'S BRIEF

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APPELLANT'S BRIEF

Opinions Below

The official and unofficial reports of the opinions delivered in the Courts below are as follows:

Special proceeding commenced pursuant to CPLR Article 78:

48 Misc. 2d 544, 265 N.Y.S.2d 304 (Supreme Court, N.Y. Co. 1966); affirmed, 275 N.Y.S.2d 363 (Appellate Division, First Department, 1966) (not officially reported); affirmed, 20 N.Y.2d 370, 283 N.Y.S.2d 31, 229 N.E.2d 602 (Court of Appeals, 1967).

Plenary action:

The opinion of the Supreme Court, New York County (Schweitzer, J.), is unofficially reported in the New York Law Journal of March 8, 1966; modified, 26 A.D.2d 912, 275 N.Y.S.2d 365 (Appellate Division, First Department, 1966); affirmed, 20 N.Y.2d 370, 283 N.Y.S.2d 31, 229 N.E.2d 602 (Court of Appeals, 1967).

Jurisdiction

In both cases jurisdiction of this Court is conferred by 28 U.S.C. §1257(2). The validity of a state statute, Public Authorities Law, §§2601-2, was challenged as being repugnant to the 14th Amendment provisions dealing with the privilege against self-incrimination and due process. The State Courts upheld the validity of the statute.

The judgment sought to be reviewed was made and entered on July 7, 1967 by the New York State Court of Appeals. Notices of appeal were duly filed on September 18, 1967. The Jurisdictional Statement was submitted on October 2, 1967, and on January 29, 1968 probable jurisdiction was noted in this Court.

Constitutional Provisions and Statutes Involved

The complete text of §§2601-3 of the New York State Public Authorities Law, §§253, 253-a and 258 of the New York State Code of Criminal Procedure, §2447 of the New York State Penal Law, and the 14th Amendment are set forth in the Appendix to this Brief. Sections 2601-3 of the Public Authorities Law is published in McKinney's Consolidated Laws of New York Annotated, Book 42, Part II, pages 415 through 417. Sections 253, 253-a and 258 of the Code of Criminal Procedure is published in McKinney's Consolidated Laws of New York Annotated, Book 66, Part I, pages 497, 511 and 142-3 of the 1967 Cumulative Annual Pocket Part. Section 2447 of the Penal Law is published in McKinney's Consolidated Laws of New York Annotated, Book 39, 1966 Cumulative Annual Pocket Part, pages 355-6. The text of the 14th Amendment is published in U.S.C.A. Constitution, page 288.

Questions Presented

1. Whether the 14th Amendment is offended by New York State's Public Authorities Law, §§2601-2, which require the disqualification of a corporation from eligibility to bid on public contracts when one of its officers or directors asserts or refuses to waive his privilege against self-incrimination before a grand jury?

(a) If not, does the fact that the recalcitrant witness resigned his office and surrendered his control of the company's affairs prior to being called as a witness make the application of the statute against the corporation repugnant to the due process clause of the 14th Amendment?

2. Whether New York State's statutory requirement, Public Authorities Law §2601, that all public contracts contain an agreement to waive the privilege against self-incrimination, is an unconstitutional condition of doing business with the state and its agencies?

Statement of Facts

Appellant corporation has been disqualified by appellees from bidding on public contracts for five years (A16-17; 57-58).* Appellees purported to act pursuant to the provisions required by §2601 of the Public Authorities Law (App. 21) to be included as clauses (A80) in their agreements with the appellant to paint several of appellees' buildings. Those provisions state that when a person refuses to testify or sign a waiver of immunity when called by a Grand Jury investigating any transaction had with the State:

> "Such a person and any firm, partnership, or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling or submitting bids to or receiving awards from or entering into any contracts with the Authority for goods, work or services, for a period of five years after such refusal" (A80) (App. 21).

On April 20, 1965 all of the officers and directors of appellant who were asked, signed waivers of immunity and testified (A6; 53). Yet, all of those officers and directors as well as some 180 employees are now actually disqualified,

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* Reference to the Appendix is designated "A" followed by the page number. Reference to the Appendix to this Brief which contains the relevant statutes is designated "App." followed by the page number.

individually and collectively, for five years from bidding on public contracts.

The sanction was imposed against appellant because on April 14, 1965, George Campbell, Jr., who at the time was neither an officer, director nor stockholder of appellant, refused, when asked, to sign a waiver of his privilege against self-incrimination (A4, 14-17; 52, 55-62, 71-73, 119-121). He was not questioned by the Grand Jury.

He was one of five children of George Campbell, Sr., appellant's founder. Each child had held an equal minority stock interest (A3-4; 64). In August, 1964, when his father died, George Campbell, Jr., was designated President of appellant and signed all corporate papers as such (A4; 67, 119). However, at the time he was only recently out of college, had less than one year's experience in the painting business, and was not actually in control of its affairs (A119-121). The *de facto* operating head of the appellant was George Morvan, who has since been named its President (A119-121).

When appellant's officers and directors learned that a Grand Jury investigation was being conducted, they were advised by their counsel that each might be called as a witness (A52). They were further advised that each might be requested to execute a waiver of the immunity conferred by §2447 of the Penal Law (App. 28-30), and were told of the disqualification provisions of the Public Authorities Law (A52).

With the exception of George Campbell, Jr., all of the officers and directors of appellant were anxious to cooperate

in full with the Grand Jury investigation (A6-7; 52-53). For personal and individual reasons (A5; 52) George Campbell, Jr., did not wish to testify without obtaining the statutory grant of immunity under the Penal Law, §2447 (App. 28-30).

In view of his attitude and because he did not want his personal attitude to reflect on the other stockholders, officers and directors, many of whom derived their livelihood from appellant, George Campbell, Jr., on March 26, 1965, submitted his resignation as an officer and director, and surrendered his minority stock interest (A4, 52; 120-121).

There can be no question but that on April 13, 1965, when George Campbell, Jr., was summoned, and on April 14, 1965, when he refused to sign a waiver of immunity, he was neither an officer, director nor stockholder of appellant (A14-15; 55-56). Appellees have never seriously disputed this. Indeed, in appellees' motion to this Court to dismiss the appeal (pp. 12, 19-21), they stressed the fact that, at that time, George Campbell, Jr., was a complete stranger to appellant.

It is significant that since George Campbell, Jr., was never asked a single question by the Grand Jury or any duly constituted board of responsibility, it is obvious that he never refused to answer a single question. Moreover, all of the controlling officers, directors and stockholders did cooperate (A6-7; 52-3). On April 20, 1965, George Morvan, then appellant's Executive Vice President and a Director; Ernest Ponte, a Vice President and husband of Anita Campbell Ponte, a Director and 10% shareholder; Theodore Ruzow, a Director and Co-Executor of the E[illegible]

of George Campbell, Sr., which owns 50% of the stock of appellant; Marian Campbell Rizzi, Secretary and a Director of appellant, and a 10% shareholder; and Elizabeth Campbell, the widow of George Campbell, Sr., Co-Executrix of his Estate, Treasurer and a Director of appellant; were all requested to appear before the Grand Jury (A6-7; 52-53). Each of them appeared voluntarily and advised the Assistant District Attorney that he (or she) would sign waivers of immunity (A6). Only George Morvan, Theodore Ruzow and Ernest Ponte were asked to appear before the Grand Jury (A6). Marian Campbell Rizzi and Elizabeth Campbell were excused by the Grand Jury and were not asked to testify (A6).

In spite of this, appellant was disqualified on April 21, 1965 (A16-17; 57-58). When appellant learned of its being blacklisted, its attorneys wrote to appellees stating that although George Campbell, Jr. had refused to sign a waiver of immunity, he had, as appellees well knew (A56), resigned as an officer, director and stockholder, and that all the other officers and directors of appellant, who had been requested to appear, had voluntarily appeared without subpoena and had voluntarily signed waivers of immunity (A19-22; 59-62). Appellant requested appellees to consider their action and, by subsequent telegram, asked for a hearing (A22). On May 5, 1965, appellees responded, stating that there was no point to any further discussion of the matter (A23).

Proceedings Below

Appellant commenced a proceeding to review the administrative determination of disqualification. The determination was asserted to have been erroneous as a matter of fact in deeming George Campbell, Jr. to have been an officer or director when he refused to sign a waiver of immunity, or as a matter of law in applying the statute to disqualify a corporation because of the acts of a former officer or director (A24-26). On motion of the appellees, the proceeding was dismissed with leave to commence a plenary action for breach of contract (A30-34). Such an action was commenced (A63-74). Both are here on appeal from final determinations dismissing them on the merits (A39-43; 132-136).

Summary of Argument

Appellant presents three contentions. The first is that the 14th Amendment prohibits economic sanctions being visited upon a person solely because he has asserted his privilege against self-incrimination (Argument I).

The second is that due process is offended by the imposition of sanctions against a corporation charged with lack of candor, even though the recalcitrant witness resigned his offices and surrendered his stock when the corporation learned that he was planning to refuse to cooperate (Argument II).

The third is that the State may not require, as a condition of doing public business, that persons bargain away their privilege against self-incrimination in advance (Argument III).

ARGUMENT I

The economic sanction imposed by the New York State Public Authorities Law against appellant is repugnant to and prohibited by the Fourteenth Amendment.

Appellant is an officially blacklisted corporation. It is barred from submitting bids on any public contracts in New York State (A16-17; 57-58). The stigma, moreover, has also resulted in the loss of substantial private and out-of-state business (A69-70).

The reason ascribed for the blacklisting is the refusal by one of appellant's former officers to waive his privilege against self-incrimination. Appellant contends that the blacklisting is prohibited by the 14th Amendment as interpreted and applied by this Court for many years.

A. The Test Prior to *Spevack*: Due Process

In 1956, this Court held that the denial or termination of a public contract, employment or license solely because the applicant or holder exercised his privilege against self-incrimination was arbitrary, and therefore a denial of due process. *Slochower* v. *Board of Education*, 350 U. S. 551, 100 L.ed.2d 692, 76 S.Ct. 637 (1956). The Court reasoned that the sanction was arbitrary since the statute operated summarily without reference to the subject matter of the questions asked, the reason for the exercise of the privilege, or whether the inquiry was even related to the fitness or qualifications of the applicant (350 U. S. at p. 558). See,

also, *Konigsberg* v. *State Bar of California*, 353 U. S. 252, 1 L.ed.2d 810, 77 S.Ct. 722 (1957).

The court distinguished *Garner* v. *Board of Public Works*, 341 U. S. 716, 95 L.ed. 1317, 71 S.Ct. 909 (1951), "where the City was attempting to elicit information necessary to determine the qualifications of its employees" (350 U. S. at p. 588).

After *Slochower* and *Konigsberg*, the distinction became firmly established. The denial or termination of a public contract, employment or license, based solely on the assertion of a constitutional right, was arbitrary. Where the assertion of the privilege had the effect of frustrating a legitimate inquiry of the person's qualifications for such contract, public employment or license, the failure to be candid justified the sanction, without offending the due process clause. *Beilan* v. *Board of Public Education*, 357 U. S. 399, 2 L.ed.2d 1414, 78 S.Ct. 1317 (1958) (public school teacher); *Lerner* v. *Casey*, 357 U. S. 468, 2 L.ed.2d 1423, 78 S.Ct. 1311 (1958) (subway conductor); *Nelson* v. *Los Angeles*, 362 U. S. 1, 4 L.ed.2d 494, 80 S.Ct. 527 (1960) (social workers); and *Kimm* v. *Rosenberg*, 363 U. S. 405, 4 L.ed.2d 1299, 80 S.Ct. 527 (1960) (deported alien). See, especially, concurring opinion of Frankfurter, J., in *Beilan* and *Lerner*, 357 U. S. at p. 410, 2 L.ed.2d at p. 1433.

B. The Privilege Against Self-Incrimination

In 1964 and 1965 this Court decided *Malloy* v. *Hogan*, 378 U. S. 1, 12 L.ed.2d 653, 84 S.Ct. 1489 (1964), and *Griffin* v. *California*, 380 U. S. 609, 14 L.ed.2d 106, 85 S.Ct. 1229 (1965).

In *Malloy*, the Court stated that the privilege against self-incrimination was embodied in the Fourteenth Amendment, and meant "the right to remain silent * * * and to suffer no penalty for such silence" (378 U. S. at p. 8). In *Griffin*, the court noted that a penalty that makes costly the assertion of the privilege cuts down on the privilege (380 U. S. at p. 614).

The rationale of *Malloy* and *Griffin* inevitably led to a review of the prior decisions. The loss of employment, license or of a business opportunity certainly is costly and is a penalty for asserting the privilege. *Missouri* v. *Cummings*, 4 Wall. 277, 320, 18 L.ed. 367 (1867); *In re Grae*, 282 N.Y. 428, 20 N.E.2d 964 (1940).

What had passed muster under a test of arbitrary conduct under the due process clause, might fail when measured by the standards of the privilege against self-incrimination. See *Matter of Gault*, 387 U. S. 1, 18 L.ed.2d 527, 559, 87 S.Ct. — (1967); *Murphy* v. *Waterfront Comm. of N. Y. Harbor*, 378 U. S. 52, 12 L.ed.2d 678, 84 S.Ct. 1594 (1964); *Stevens* v. *Marks*, 383 U. S. 234, 15 L.ed.2d 724, 86 S.Ct. 788 (1966); *Garrity* v. *New Jersey*, 385 U. S. 493, 17 L.ed.2d 562, 87 S.Ct. 616 (1967).

In *Spevack* v. *Klein*, 385 U. S. 511, 17 L.ed.2d 574, 87 S.Ct. 625 (1967), there had been a legitimate inquiry into an attorney's qualifications by a duly authorized committee of the Bar Association. The questions were relevant to that inquiry and dealt with the attorney's fitness. On the other hand, the attorney's only choice was between self-incrimination and loss of license. This Court held that

the privilege against self-incrimination forbade disbarment, even though the attorney's assertion of the privilege tended to frustrate the inquiry, was hardly the candor the committee felt it had a right to expect, and similar disbarment had theretofore been upheld under the due process clause. See *Cohen* v. *Hurley,* 366 U. S. 117, 6 L.ed. 2d 156, 81 S.Ct. 954 (1961). Compare *In re Solovei,* 276 N.Y. 647, 12 N.E.2d 802 (1938).

Three dissenters recognized that the natural effect of the holding was to eliminate the well established distinction between arbitrary and reasonable government action as formulated in *Slochower, Beilan, Lerner* and *Nelson* (385 U. S. at pp. 527-528).

The concurring judge suggested that the different result in *Spevack* might be limited to cases involving non-public employees (385 U. S. at p. 519). The majority explicitly left that question undecided (385 U. S. at p. 516, f.n. 3), although in *Garrity* v. *New Jersey,* 385 U. S. 493, 17 L.ed.2d 562, 87 S.Ct. 616 (1967), they did decide that testimony by a policeman which was coerced by threat of dismissal, like a coerced confession, could not be introduced in evidence.

C. The New York Court of Appeals' Application of *Spevack*

The New York Court of Appeals upheld appellant's disqualification (A39-43, 132-136). On the same day the Court also upheld a disqualification of a policeman, *Gardner* v. *Broderick,* 20 N.Y.2d 277, 282 N.Y.S.2d 487, 229 N.E.2d

184 (1967). The Court noted that its opinion in *Gardner* governed the constitutional question posed by both cases (A42, 135). The Court of Appeals did not view *Spevack* as having established a test different from the traditional due process test in *Nelson* v. *Los Angeles,* and indicated that it did not think this Court would do so in an appropriate case (20 N.Y.2d at pp. 229-30).

Although in *Gardner,* the Court of Appeals stressed its view that a policeman, as an employee of the State, has a greater duty of candor than a non-public employee (20 N.Y.2d at pp. 230-231), it did not explain appellant's disqualification on any different grounds. Not only is appellant not a public employee, but, unlike *Gardner,* appellant was not first given a hearing, and was never questioned by any body or agency authorized to inquire into its fitness. The only investigation was by a Grand Jury, which, by statute, is not authorized to inquire into or render reports on the fitness of non-public employees. Code of Criminal Procedure §§253 and 253-a (App. 25-27); *In re Healy,* 161 Misc. 582, 293 N.Y.S. 584 (Co. Ct. Queens 1937). See, also, *Wood* v. *Hughes,* 9 N.Y.2d 144, 212 N.Y.S.2d 33, 173 N.E.2d 144 (1961); *Application of Grand Jury Report Concerning Its Investigation of Certain Television Quiz Programs,* 19 Misc.2d 682, 193 N.Y.S.2d 553 (Sup. Ct. New York Co. 1959); *Matter of Wilcox,* 153 Misc. 761, 226 N.Y.S. 117 (Sup. Ct. Monroe Co., 1934). With respect to §253-a, see *In re Grand Jury, January, 1967,* 52 Misc. 2d 895, 277 N.Y.S.2d 105, 107 (Sup. Ct. Cortland Co., 1967).

The Public Authorities Law is designed solely to punish private contractors who exercise their privilege against

self-incrimination in the Grand Jury room. Nowhere in the statute, or, for that matter, in any other statute of the State of New York, is there a provision disqualifying individuals or corporations who have actually been found guilty of misconduct. Thus, no matter how serious the misconduct, as long as no one asserts the privilege against self-incrimination, there is no automatic blacklisting. *Matter of Zara Contracting Corp.*, 45 Misc.2d 497, 257 N.Y.S. 2d 479 (Sup. Ct. Alb. Co. 1964), aff'd 23 A.D.2d 718, 257 N.Y.S.2d 118 (3d Dept. 1965); *Caristo Const. Corp.* v. *Rubin*, 10 N.Y.2d 538, 225 N.Y.S.2d 502 (1962). Conversely, no matter how minor or remote the misconduct, there is automatic blacklisting only if the privilege against self-incrimination is asserted. Fitness is immaterial (App. 21-22).

Since Grand Jury proceedings are secret, Code of Criminal Procedure §258 (App. 28), and since not a single question was asked the witness who refused to waive his privilege, appellant's disqualification would probably have been deemed arbitrary on due process grounds, even before *Spevack* (*supra*, pp. 9-10). Since the sole function of the statute is to make the assertion of the privilege costly, *a fortiori*, it is invalid under the test in *Spevack*.

ARGUMENT II

The imposition of a vicarious penalty against a corporation which disavowed the acts of its former president is repugnant to the Due Process Clause of the Fourteenth Amendment.

Appellant was disqualified because a former officer refused to sign a waiver of immunity. The officer in question never actually was in control of the Corporation's activities, although he was the titular head of the Corporation (A 119-120). He was the youthful son of the founder of the business, who was designated President of the Company upon his father's death (A4; 67; 121). This was less than one year after he finished his schooling and entered the business (A119-121).

The Court of Appeals has held that (1) the demand by the corporation for the resignation of the officer in anticipation of his planned refusal to execute a waiver of immunity can be disregarded, and (2) that the procedure for discretionary reinstatement contained in the Public Authorities Law (A42-3; 135-6) satisfies all due process objections.

When dealing with penalties imposed against a corporation, it has always been a cardinal principle that the corporation is responsible only when the acts and actions conducted by its agents were in furtherance of its affairs. *N.Y. Central & H. R. R. Co.* v. *United States,* 212 U. S. 481, 53 L. ed. 613, 29 S. Ct. 304 (1909); *People* v. *Canadian Fur Trappers Corp.,* 248 N.Y. 159, 161 N.E. 451 (1928).

If a corporation is to be disqualified for its refusal to cooperate or be candid in an investigation of its affairs,

then the refusal or lack of candor must be attributable to the corporation as an act of the corporation. In the case at bar, the corporation was candid and cooperated as best it could, and it disavowed, as best it could, the plans of the one person in the corporation who indicated that, for personal reasons, he might not cooperate. That person was dismissed, discharged and separated from his official position in the corporation. If this severance had been a sham and, in fact, the recalcitrant witness continued to control the corporation, his resignation would be disregarded. *Matter of Arglo Painting Corp.* v. *Board of Education,* 47 Misc. 2d 618, 263 N.Y.S.2d 124 (Sup. Ct. Kings Co., 1965). But here, there is no question that appellant is not a "front" for George Campbell, Jr., so that his failure to cooperate cannot conceivably have been deemed an act of the corporation.

To cause the corporation to suffer a penalty of disqualification vicariously in spite of its disavowal before the fact of the so-called contumacious activity, and in spite of the corporation's cooperation and candor, is indiscriminate and arbitrary, and plainly a denial of due process. See *Wieman* v. *Updegraff,* 344 U. S. 183, 97 L. ed. 216, 73 S. Ct. 215 (1952); *Schware* v. *Board of Bar Examiners,* 353 U. S. 232, 1 L. ed. 2d 796, 77 S. Ct. 752 (1957).

The Court of Appeals deemed the procedure set forth in §2603 of the Public Authorities Law (App. 23-24) to satisfy any due process objection which might be raised (A41-42, 135-136).

If §2603 of the Public Authorities Law was limited to a determination of whether George Campbell, Jr.'s resigna-

tion was a sham or whether his refusal to waive immunity was on behalf of the corporation and in furtherance of its affairs, then, perhaps the policy of disqualifying first and holding a hearing later might satisfy due process. But §2603 involves something quite different from a review of the disqualification. Indeed, by its terms it does not even involve a review of the basis for the disqualification. It only deals with whether there has been a change in circumstances after the contumacious behavior, and whether the public interest would be served by reinstatement. Section 2603 was added only after the Legislature realized the disastrous consequences if the State and its agencies were unable to deal with Westinghouse and General Electric, both of whom were subject to automatic disqualification for five years. To cope with this, the Legislature added §2603 (Governor's Message April 21, 1959, McKinney's 1959 Session Laws of New York, pp. 1757-58). The public interest requirement makes the procedure entirely unsuitable for a relatively small company such as appellant.

Moreover, relief under §2603 is discretionary. If appellant is to be punished for lack of candor, then that lack of candor must be attributable to appellant. If lack of candor is not attributable to appellant, then appellant should be reinstated. Discretionary reinstatement for an erroneously disqualified corporation does not supply ample protection.

ARGUMENT III

Section 2601 of the New York Public Authorities Law imposes unconstitutional conditions on those doing business with the State and its agencies.

Section 2601 of the Public Authorities Law requires that all public contracts contain a waiver of the privilege against self-incrimination as a condition of the contract (App. 21-22).

The doctrine of unconstitutional conditions forbids the government from exacting a waiver of important constitutional rights as a condition of its granting a benefit or privilege, even though it might not be required to grant any benefit or privilege at all.

> "The potential erosion of fundamental liberties through the use of this bargaining technique has prompted the development of the doctrine of 'unconstitutional conditions.'" *Unconstitutional Conditions,* 73 Harv. L. Rev. 1595, 1596 (1960).

Accord, Willcox, *Invasions of the First Amendment Through Conditional Public Spending,* 41 Cornell L.Q. 12 (1955); Hale, *Unconstitutional Conditions and Constitutional Rights,* 35 Colum. L. Rev. 321 (1935); Merrill, *Unconstitutional Conditions,* 77 U. of Pa. L. Rev. 879 (1929); Thomas Reed Powell, *The Right to Work for the State,* 16 Colum. L. Rev. 99 (1916).

This Court stated the doctrine in *Frost* v. *Railroad Commission,* 271 U. S. 583, 593-4, 70 L. ed. 1101, 1102-5, 46 S. Ct. 605 (1926):

> "It is not necessary to challenge the proposition that, as a general rule, the state, having power to deny a

> privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited; and *one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights.*" (Emphasis added.)

Accord, *Sioux Remedy Co.* v. *Cope,* 235 U. S. 197, 59 L. ed. 193, 35 S. Ct. 57 (1914) (statute which forbade use of state courts to foreign corporations unless they subjected themselves to the general jurisdiction of the state by the appointment of a resident agent held to violate the Commerce Clause); *Western Union Tel. Co.* v. *Kansas,* 216 U. S. 1, 54 L. ed. 355, 30 S. Ct. 190 (1909) (excessive tax imposed as a condition of doing business by foreign corporation held to violate the due process and commerce clauses); *Terral* v. *Burke Const. Co.,* 257 U. S. 529, 66 L. ed. 352, 42 S. Ct. 93 (1922) (doing business conditioned on agreement not to remove cases to Federal Courts held to violate Article 3).

The government may not act with the same freedom as a private party. Thus, when the government puts conditions in its contracts which are regulatory, they are tested by the same rules as any other government regulation. *Frost* v. *Railroad Comm.,* *supra*; *Home Insurance Co.* v. *Morse,* 87 U. S. 445, 22 L. ed. 365 (1874).

The privilege against self-incrimination is a right "of constitutional stature whose exercise a state may not condition by the exaction of a price." *Garrity* v. *New Jersey,* 385 U. S. 493, 500, 17 L. ed. 2d 562, 567, 87 S. Ct. 616 (1967).

Since the statute here purports to allow the "buying up" of constitutional rights, it and the clause of the contract executed thereunder are invalid.

Conclusion

For the reasons set forth above, appellant's disqualification should be reversed.

Respectfully submitted,

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